IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

1. DB CIVIL WRIT PETITION NO.3236/2000
G.K. Gandhi & Ors. V/s Union of India & Ors.

2. DB CIVIL WRIT PETITION NO.3558/2000
Ravindra Singh V/s Union of India & Ors.

3. DB CIVIL WRIT PETITION NO.3564/2000
Raj Kumar Gupta & anr. V/s Union of India & Ors.

Date of Order : : 02 February, 2007

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE P.S. ASOPA

Shri Ajeet Bhandari, for the petitioners.
Shri G.C. Garg, Sh.Alok Garg and Sh.Rahul Kanwar,
Shri S.S. Hasan, for the respondents.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE) :

These writ petitions arising from the common order of the Central Administrative Tribunal, Jaipur Bench (hereinafter referred to as 'the Tribunal') dated 22.2.2000 dismissing the Original Applications of the petitioners were heard together and are disposed of by this common judgment.

The petitioners had filed applications before the Tribunal challenging the action of the authorities of the railways counting the past service of

respondent nos. 5 to 24 prior to the date of their absorption for the purpose of seniority, and for declaration that they be declared junior to the petitioners in the cadre of Ticket Collector(TC) and Travel Ticket Examiner (TTE). They set up a plea that Para 311 of the Indian Railway Establishment Manual (hereinafter referred to as the Manual or IREM) which provides for transfer in the interest of administration is not applicable in the matter of determination of seniority in case of absorption. Before this Court, in these writ petitions, the petitioners have challenged the vires of Para 311.

Briefly stated, a decision was taken in the railways to modernize the telegraph service as a result of which nineteen persons of Telegraph wing became surplus and they were absorbed in the cadre of TC and TTE on 3.7.1993. According to the petitioners, the private respondents are not entitled to count the past service as they had opted for absorption in the TC Branch, and therefore their absorption should be treated as transfer/absorption on own request and not in the interest of the administration. It may be mentioned that out of nineteen employees seven were absorbed on the post of TTE while twelve were absorbed on the post of TC vide order dated 3.7.1993 and promoted as TTE on ad hoc basis vide order dated 26.11.1993. The petitioners relied on Para 303(a) of

the IREM according to which persons trained subsequently will rank junior to the persons who had successfully completed the training earlier.

According to the respondents, their absorption was the consequence of modernization of the telegraph branch pursuant to policy decision in the interest of railway administration, and therefore notwithstanding that the private respondents exercised their option, their seniority would be governed by Para 311 of the Manual.

The Tribunal on the pleadings of the parties framed two issues for decision as under :-

i) Whether the transfer/absorption of surplus employees holding the posts of Telegraphists/Sr. Telegraphists of the Telegraph Branch to the Commercial Department as TCs and TTEs respectively was in the interest of the railway administration or it was, as alleged by the applicants, on the option (request) of these employees.

ii) Whether Para 311 of the IREM is being incorrectly interpreted by the respondents, as asserted by the applicants, and it is not applicable in the case of respondents nos. 4 to 22.

Issue no.1 was decided as follows :-

“10. As regards the first issue, the official respondents have emphatically asserted that the surplus Telegraphists and Sr. Telegraphists were transferred / absorbed in the Commercial Department very

much in the interest of the railway administration. It has been explained by them that the work of Telegraph Branch has substantially reduced due to modernisation and in such circumstances, certain employees of the Telegraph Branch had to be transferred/absorbed in various posts available within railway including the posts of Tcs and Sr. Tcs available in the Commercial Department. It was strongly contended by the learned counsel for the official respondents that such transfers/absorptions can be seen in no other manner than being in the overall interest of the railway administration. On the other hand, the learned counsel for the applicants argued that since options were asked, these transfers/absorptions should be considered as on request and such employees should, therefore, get bottom seniority. It has, however, been explained on behalf of the respondents that since absorption of surplus has to be completed in posts available in various Branches/Departments within railways, options are asked from such surplus staff for their absorption on various posts and in this case, out of many, few staff gave their option for ticket checking branch and accordingly and in pursuance to the circular of Railway Board dated 21.4.1989 absorption was made. We have given our anxious consideration to this issue. There is no dispute that the respondents Nos.4 to 22 were surplus employees, so rendered surplus due to the reduction of work in Telegraph Branch on account of modernisation. This was the real reason for the transfer/absorption of the respondent Nos. 4 to 22 and they have never applied for a transfer of cadre or even a new place of posting. They were not even sent out on deputation. In no way can it, therefore, be argued that they were not transferred/absorbed in Commercial Department in any manner other than in the interest of railway administration. Asking options (and not request as averred by the applicants), was just to enable them to make a choice out of various avenues available for their absorption. We are, therefore, of the opinion that in the facts and circumstances of the case, it has to be held that in the instant case, when railway administration has transferred/absorbed employees from the Telegraph Branch to

> Commercial Department due to reduction of work, it is transfer/absorption in the interest of the railway administration and is not because of the request of the surplus employees. This issue is according decided."

As regards issue no.2, the Tribunal held as follows :-

> A plain reading of the above rule will clearly establish that if a railway servant (except non-gazetted employees of Diesel Locomotive Works on whom paras 324 to 328 apply) is transferred from one cadre to another in the interest of administration, his seniority is regulated by the date of promotion/date of appointment to the grade as the case may be. The applicants have neither challenged the vires of this rule nor have they contended that the said rule has been struck down by any judgment of any Tribunal or Court. The para 311, therefore, stands as a specific provision to regulate the seniority of railway servants transferred in the interest of administration. There is nothing to support the contention f the applicants that paras 310, 311 and 312 exclusively deal with the question of assignment of seniority of staff who are already working and are on the rolls of the administration in a particular Department/ Branch / Cadre and para 311 is only applicable when a person's place of duty has to be shifted on transfer on the same post on which he holds lien but does not change the character of the post he occupies. Each of the aforementioned three rules deal with a specific situation. Para 310 regulates seniority when railway servants are transferred on mutual exchange from one cadre of a Division to corresponding cadre in another Division. As already stated earlier, Para 311 regulates seniority in the event of transfer of railway servant in the interest of administration. Para 312 deals with transfer on request. There appears no doubt at all about the specificity of Para 311 when a railway servant is transferred in the interest of administration. In fact, Paras 310 and Para 312 bring into sharp focus the differentration between regulation of

> seniority in case of mutual exchange or own request transfer and when a transfer is made in the interest of administration under Para 311. Having already held, vis-a-vis the first issue, that the transfer of the respondents from the posts of Telegraphists and Sr. Telegraphists to the post of Tcs and TTEs was in the interest of the railway administration, we have no hesitation in concluding that Para 311 of IREM is fully applicable in this case and official respondents having correctly applied a specific rule that provides for regulation of seniority of railway servants in case they are transferred to from one cadre to another in the interest of administration."

On behalf of the petitioners it was submitted that the controversy stands concluded by the decision of the Supreme Court in Rama Kant Chaturvedi Vs. Divisional Superintendent, Northern Railway, 1980 (Supp.) SCC 621, V.K. Dubey Vs. Union of India, (1997) 5 SCC 81 and South Eastern Railway, Calcutta Vs. Ramanarain Singh, (1997) 5 SCC 84 wherein after noticing Para 311 it was held that the rule contemplates ordinary transfers and not situations arising from absorption of personnel from other cadres on compassionate ground.

Counsel also placed reliance on Joyachan M. Sebastian Vs. The Director General, 1996 (2) ATJ 676, Union of India Vs. K. Savitri, (1998) 4 SCC 358, Superintending Engineer Vs A. Sankariah, 2004 (2) ATJ 227.

On behalf of the respondents, it was submitted that a three-Judge Bench of the Supreme

Court in Paresh Chandra Nandi Vs. Controller of Stores N.F. Railway, 1971 SLR 68 = (1970) 3 SCC 870 dealing with similar controversy arising from transfer on absorption in another department under identical provisions of the Railway Fundamental Rules, held that transferred employees from one permanent post to another permanent post bring along with them seniority and they would be entitled to hold substantively the permanent post to which they are transferred. It was submitted that it is settled position in law that in case of absorption of surplus employees they are entitled to count their past service.

Counsel also submitted that absorption on account of modernization cannot be said to be absorption on compassionate ground and it was not a case of relaxation of any rule. An employee cannot be made to suffer for no fault of his and where he is rendered surplus the employer ought to absorb him on an equivalent or equated post treating it as transfer from one cadre to another in the interest of administration and the same cannot be said to be compassionate appointment which is usually made by relaxing rule when a particular wing is closed and no suitable post is available for absorption.

Paras 301, 303(a) of the IREM – relied upon on behalf of the petitioners and Para 311 – relied upon on behalf of the respondents may at this stage be quoted as under :-

> 301 – General - The rules contained in this Chapter lay down the General Principles that may be followed for determining the seniority of non-gazetted railway servants on railway administration, except that for the purpose of determining the seniority and promotion of non-gazetted employees of the Diesel Locomotive Works the rules contained in paragraphs 324 to 328 of this Chapter shall be followed.
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> 303 – The seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority should be determined as under :
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> a) Candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts. Those who join the subsequent course for any reason whatsoever and those who pass the examination in subsequent chances, will rank junior to those who had passed the examination in earlier courses.
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> 311 - TRANSFER IN THE INTEREST OF ADMINISTRATION - Seniority of railway servants on transfer from one cadre to another in the interest of the administration is regulated by the date of promotion/date of appointment to the grade as the case may be."

The dispute has to be resolved in the light of the decisions in the cases of Rama Kant Chaturvedi Vs. Divisional Superintendent, Northern Railway, Moradabad, 1980 (Supp) SCC 621, V.K. Dubey &

Ors. V/s Union of India & Ors., (1997) 5 SCC 81 and South Eastern Railway, Calcutta & Ors. V/s Ramanarain Singh & Ors., (1997) 5 SCC 84 – upon which reliance was placed on behalf of the petitioners, and Paresh Chandra Nandi V/s Controller of Stores N.F. Railway (supra) – upon which reliance was placed on behalf of the respondents.

In Rama Kant Chaturvedi & Ors. V/s Divisional Superintendent, Northern Railway (supra), persons absorbed in the diesel unit by relaxing the qualification claimed seniority over those who had been absorbed earlier and were qualified for the post on the basis of inter se seniority in the parent cadre. The Court held that if the person senior on the Steam Side did not come in earlier because they were barred from coming in by the requirement of minimum educational qualification, and subsequent relaxation of the rule cannot enable them to take frog-leap over the heads of those who had come into Diesel side earlier. The relevant observations in Para 4 of the judgment may be quoted as under :-

> “ from the facts narrated above it is clear that the diesel side running staff was constituted and treated as a separate unit distinct from the steam side running staff. Recruitment and avenues of promotion were also different. Direct recruitment to the running staff on the diesel side was to be made to the lowest post of Diesel Cleaner and thereafter, promotions were to be made successively to the

> posts of Drivers' Assistants, Shunters, Diesel Driver (C), Diesel Drivers (B) and Diesel Drivers (A). As the Diesel Unit was being constituted for the first time and as considerable time might elapse before Diesel Cleaners could be promoted as Shunters and Drivers' Assistants it was decided to draft Firemen on the steam side, possessing the minimum Assistants after giving them the requisite training. That was done. Firemen Grade `C' who were of lower category than Firemen Grade `B' and Firemen Grade `A' but who happened to possess the minimum educational qualification which many of the Firemen Grades `A' and `B' did not possess were fortunate enough to be drawn into the diesel unit earlier than some of the Firemen Grades `A' and `B' who came in later as a result of the relaxation of the rule prescribing minimum educational qualification . Of course, all the initial appointments were on an officiating basis, we do not see how those who were drafted into the diesel unit earlier would lose the benefit of their continuous service on the diesel side merely because others who were senior to them on the steam side came in or chose to come in at a later stage. If seniors on the steam side did not come in earlier it was because they were barred from coming in by the requirement of a minimum educational qualification. The subsequent relaxation of the rule cannot enable them to take a `frog leap' over the heads of those who had come into the diesel side earlier. The seniority on the steam side is of no relevance in determining seniority on the diesel side when they are appointed on the diesel side on different days.
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> (emphasis supplied)

In V.K. Dubey & Ors. Vs. Union of India (supra), the Supreme Court following the decision in Rama Kant Chaturvedi case held that seniority on electrical side was to be fixed from the date of deployment on that

side without granting the benefit of service rendered on Diesel side because the absorption saved the staff from retrenchment. That too was a case of absorption on the electric locomotive side (from diesel side) after training. It was observed that instead of retrenching the persons from service they were absorbed by giving necessary training in operating electric locomotive and as a consequence they were shifted to a new cadre. They can not claim seniority over the staff regularly working in the electric locomotives department. The relevant part of the judgment may be extracted as under :-

> "5. Shri Vijay Bahuguna, learned Senior Counsel appearing for the appellants, contends that since they had been working on the diesel side for a long number of years, merely because they were sent to training for three months to be absorbed in the electrical locomotive operations, their entire previous length of service cannot be wiped out causing detriment to their length of service and promotional avenues on account of the change in the policy. Therefore, the view taken by this Court requires reconsideration. We find no force in the contention. It is seen that the diesel engine drivers and the staff working with them operate in one sector, namely, diesel locomotive sector, while electrical engine drivers and the staff operating on the electrical engines operate on a different sector. Consequent upon the gradual displacement of diesel engines, instead of retrenching them from service they were sought to be absorbed by giving necessary training in the trains operating on electrical energy. As a consequence, they were shifted to a new cadre. Under these circumstances, they cannot have a lien on the posts on electrical side nor can they be entitled to seniority over the staff regularly working in the electrical locomotives

> department. Under those circumstances, this Court has held that they cannot have a seniority over them.
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> (emphasis supplied)

In South Eastern Railway V. Ram Narayan Singh (supra) which too was decided following the decision in Rama Kant Chaturvedi, the employees belonging to the diesel side were subsequently absorbed and posted on the electric side in the aftermath of electrification of tracks i.e. switching over from diesel locomotives to electric locomotives after completing the requisite training and qualifying at the requisite test. It was held that it was not a case of transfer in the interest of administration but absorption on compassionate grounds. The following observation may usefully be quoted -

> "The Rules only contemplate ordinary transfers and not situations arising from absorption of personnel from other cadres on compassionate grounds. So also the High Court was not right in taking the view that it was a "transfer" in the interest of the administration. In fact it was not a "transfer" in the real sense at all. It was absorption of the employees on the diesel side or the electric side upon their acquiring the qualification requisite for being absorbed. So also it was made on compassionate grounds and not in the interest of the administration. The point is squarely covered against the appellants by the decision in *Rama Kant case.*"

The decisions in the abovementioned cases, it would appear, were rendered in the fact situation of the case. In Rama Kant Chaturvedi case, which is the

leading case, there was successive absorption, one was in accordance with the qualifications prescribed in the rules while the other was the result of relaxation of the qualification though the persons concerned were senior in the parent cadre to those absorbed earlier. In V.K. Dubey case, it was found, absorption had saved the staff from retrenchment and they were absorbed after necessary training in operating electric locomotives. Ram Narayan Singh case was also a case of absorption and on compassionate ground.

It is not the case of the respondents that the Telegraphists/Senior Telegraphists were intended to be retrenched nor there is any dispute about the respondents not fulfilling the qualifications for the posts of TC and TTE. The definite case of the railways is that transfer/absorption of the private respondents was in the interest of railway administration on account of restructuring of telegraph wing, and seeking option from the persons concerned did not amount to transfer on own request.

The decision in Paresh Chandra Nandi V/s Controller of Stores N.F. Railway (supra) was rendered by three-Judge Bench of the Supreme Court. It was an earlier decision but not noticed in the cases relied upon on behalf of the petitioners. In Paresh Chandra Nandi case, the issue of absorption and transfer was

considered and it was held that person transferred will bring along with him seniority which he had on the post from which he had been transferred. The relevant observations in Para 10 may be quoted as under :-

> "The question is could the railway authorities, under the rules, transfer or not any one or more of the said staff so absorbed from the posts where they were allotted to any other department or departments where such transfer or transfers became administratively necessary. We may note that the transfer of lien enjoyed by respondents 4 to 8 in the Head Office was not a mere paper transfer, for, respondents 4 to 8 were actually transferred from the Head Office Wing to the Stores Department. Since they were permanent employees, enjoying liens in their respective posts to which they wee confirmed since August 15, 1947, ordinarily their conditions of service, e.g., salary and seniority, could not be affected to their prejudice as a result of their transfer to any other department or wing. Once, therefore, they were transferred from one permanent post to another permanent post they would be entitled to hold substantively the permanent posts to which they were transferred bringing along with them the seniority which they had in the posts from which they were transferred. If that were not so, the result of a transfer from one post to another would mean that a transferred employee would have to start *de novo,* from a scratch and would consequently stand last in the department to which he is transferred. In actual practice, therefore, no transfer can be effected from one department to another without materially affecting the chances of promotion of such an employee. As we shall presently show, the rules do not contemplate such a position."
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> (emphasis supplied)

Counsel for the petitioners submitted that there was conflict between decisions in Paresh Chandra Nandi case on the one hand and Rama Kant Chaturvedi, V.K. Dubey and South Eastern Railway cases on the other hand. In our opinion, if there is any conflict, the decision in Paresh Chandra Nandi rendered by the Larger Bench would have precedence. Reference may be made to N.S. Giri v. Corporation of City of Mangalore, (1999) 4 SCC 697, wherein it was observed as under :-

> "The abovesaid decision does support the proposition canvassed by the learned counsel for the appellant that an industrial settlement would operate even by overriding a statutory provision to the contrary. However, suffice it to observe that the Constitution Bench decision in *New Maneck Chowk Spg. and Wvg. Co. Ltd.* and also the decision of this Court in *Hndustan Times Ltd.* which is a four-Judge Bench decision, were not placed before the learned Judges deciding *LIC of India case.* A decision by the Constitution Bench and a decision by a Bench of more strength cannot be overlooked to treat a later decision by a Bench of more strength cannot be overlooked to treat a later decision by a Bench of lesser strength as of a binding authority; more so, when the attention of the Judges deciding the latter case was not invited to the earlier decision available. Respectfully following the earlier two decisions referred to hereinabove, we are of the opinion that the award dated 11.1.1969 under Section 10-A of the ID Act appointing the age of retirement at 55, cannot be upheld and given effect to by issuing a writ for its implementation. In any case, the award stood superseded by the subsequent statutory rules of 1974 which too appointed the age of retirement at 55 and there is nothing wrong in the appellant having been asked to superannuate at the age of 55 consistently with the service rules as applicable on that day."

Counsel for the respondents also referred to V.S. Murty Vs. The Deputy Chief Accounts Officer, 1983 SLR SC 655, Union of India Vs H.A. Khan, 2000 (2) SC SLJ 410, Anand Chandra Dash Vs. State of Orissa, 1998 SCC (L & S) 638, Ratnesh K. Sharma Vs. Rajasthan Civil Services, 2001 (1) SC SLJ 34, Vinod Kumar Sharma Vs. State of U.P., (2001) 4 SCC 675, State Vs. Ali Mohd. Wani, 2004 (1) SLR 599, Karnataka State Pollution Control Board Officers Association, Bangalore Vs. Karnataka State Pollution Control Board, Bangalore, 2003 (6) SLR 278 and Mani Kant Gupta Vs. State of Uttar Pradesh, 2004 (1) ATJ 349, wherein the benefit of past service was allowed to the employees on absorption.

The decisions relied upon on behalf of the petitioners being distinguishable, and the transfer/absorption of the private respondents being in the interest of railway administration and not on compassionate grounds after relaxing the qualifications unlike those cases, we are satisfied that they were rightly allowed the benefit of past service, and the petitioners are therefore not entitled to the relief. The Tribunal, thus did not commit any error in dismissing their original applications.

In the result, we find no merit in these writ petitions which are accordingly dismissed, but without any order as to costs.

[P.S. ASOPA],J. **[S.N.JHA],CJ.**

Skant/-